



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 19, 1994

Mr. Rex. H. White, Jr.
Hutcheson & Grundy
111 Congress Avenue, Suite 2700
Austin, Texas 78701-4043

OR94-563

Dear Mr. White:

The Southwest Travis County Municipal Utility District No. 1 (the "district") has asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The district's request was assigned ID# 27974.

The district received the following request from an attorney on behalf of his clients, James and Kay Mayo:

The Mayos request that the [district] provide them with copies of all: (1) written notices, (2) agendas, (3) tape recordings, (4) minutes, (5) handwritten notes, (6) telephone memos, (7) interoffice memos, (8) letters, and (9) other documents used for or during the [district's] open meetings held between January 1988 and December 1992 that pertain to the [district's] decision to enforce restrictive covenants against the Mayos, the [district's] decision to intervene in the lawsuit by Shady Hollow Homeowners Assn. against the Mayos, and the [district's] decision to enforce restrictive covenants.

The requestor also asked for copies of documents that show the district's policy concerning enforcement of restrictive covenants. The requestor's letter states that he is "not requesting the production of any documents that are confidential under the law or considered attorney-work product." You have submitted to this office as responsive to the request a memorandum to the district's board of directors from the district's attorney; a copy of a certified agenda of an executive session; a letter to the Mayos; agendas of public meetings; and minutes of public meetings with attached documents. You contend that this information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.

The copy of a certified agenda may not be disclosed to the requestor and also is not responsive to the request, since the requestor indicated he was not seeking confidential information. Section 551.146 of the Government Code provides that it is a criminal offense to disclose to a member of the public a certified agenda of a closed meeting. A certified agenda of a closed meeting is available for public inspection and copying only under a court order. Gov't Code § 551.104. The submitted copy of the district's certified agenda is therefore confidential by law. Gov't Code §§ 552.101; 552.352 (disclosure of confidential information is a criminal offense); Open Records Decision No. 563 (1990) at 6.

As to the meeting agendas and minutes of public meetings, these are public documents that may not be withheld from disclosure. Open Records Decision No. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records"). It appears from the minutes you sent that the district adopted procedures and form letters for dealing with enforcement of deed restrictions. Therefore, these also appear to be public documents that may not be withheld from disclosure. Open Records Decision Nos. 551 (1990) at 2-3; 221.

You contend that the letter from the district to the Mayos is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 provides an exception for information that is related to pending or reasonably anticipated litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The letter is related to the district's pending litigation against the Mayos. However, you may not withhold this letter from disclosure because the Mayos have already seen or had access to it. Once information has been obtained by the opposing parties to the litigation, no section 552.103 interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2.

We assume that you are asserting a section 552.107 exception for the memorandum.¹ Section 552.107 excepts information from required public disclosure if:

(1) It is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or

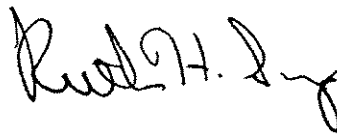
(2) a court by order has prohibited disclosure of the information.

¹You stated that portions of the documents at issue were excepted by the attorney-client privilege under section 552.107. Since none of the documents were marked, we assume this is the document for which you were asserting the section 552.107 exception.

Section 552.107 excepts from disclosure only those communications that reveal client confidences or the attorney's legal advice, opinion, and recommendation. Open Records Decision Nos. 589 (1991) at 1; 574 (1990); 462 (1987) at 9-11. A review of the memorandum shows that it contains legal advice, opinion, and recommendation from the district's attorney to the district's board of directors. The memorandum may therefore be withheld from disclosure under section 552.107.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 27974

Enclosures: Marked documents

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²We assume that the memorandum was not disclosed in a public meeting. Such disclosure would have waived any attorney-client privilege and made the memorandum a public document.